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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

India

1. The Committee considered the third periodic report of India (CCPR/C/76/Add.6) at its 1603rd to 1606th meetings on 24 and 25 July 1997 and subsequently adopted, at its 1612th meeting (sixtieth session), held on 30 July 1997, the following observations.

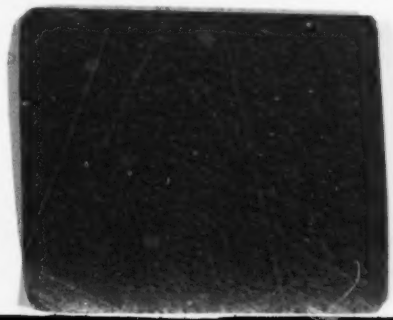
A. Introduction

2. The Committee welcomes the third periodic report of India, although it regrets the delay in submitting it to the Committee. While noting that the report provides comprehensive information on the constitutional and legislative norms applicable in India in the field of human rights, and makes reference to the Committee's previous comments during consideration of the State party's second periodic report, as well as to a number of court decisions, the Committee regrets the lack of information therein on difficulties encountered in implementing the provisions of the Covenant in practice. The delegation acknowledged in some measure these difficulties and it provided the Committee with detailed and comprehensive written and oral information in the course of the consideration of the report. In this regard, the Committee appreciates the cooperation which India has thus extended to the Committee in the discharge of its mandate.

3. The information submitted by a wide range of non-governmental organizations also assisted the Committee in its understanding of the human rights situation in the State party.

B. Factors and difficulties affecting the implementation of the Covenant

4. The Committee recognizes that terrorist activities in the border states, which have caused the death and injury of thousands of innocent people, force



the State party to take measures to protect its population. It stresses, however, that all measures adopted must be in conformity with the State party's obligations under the Covenant.

5. It notes, moreover, that the size of the country, its huge population, the massive poverty and the great disparities in the distribution of wealth among various social groups affect the advancement of rights. The persistence of traditional practices and customs, leading to women and girls being deprived of their rights, their human dignity and their lives, and to discrimination against members of the underprivileged classes and castes and other minorities, and ethnic, cultural and religious tensions constitute impediments to the implementation of the Covenant.

C. Positive aspects

6. The Committee notes with satisfaction the existence of a broad range of democratic institutions and a comprehensive constitutional and legal framework for the protection of human rights. The Committee also welcomes frequent references to provisions of international human rights instruments by the courts, in particular the Supreme Court.

7. The Committee welcomes the establishment of the National Human Rights Commission in 1993 and the respect which the Government of India accords to its recommendations. The Committee notes that the Commission has been given powers, limited though these are, under the Protection of Human Rights Act, to inquire into complaints of human rights violations, to intervene in court proceedings involving allegations of human rights violations or otherwise dealing with human rights issues, to review constitutional and legal norms and the conformity of laws with international human rights instruments, to make specific recommendations to the Parliament and other authorities and to undertake activities in the field of human rights education. It also welcomes the recent setting up of human rights commissions in six states, including Punjab and Jammu and Kashmir, and of human rights courts in several other states of the Union.

8. The Committee also welcomes the establishment of the National Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Women in 1992, and the National Commission for Minorities in 1993. These commissions have initiated some improvements, in particular in the levels of education and in the representation of the various groups concerned within elected bodies and other authorities.

9. The Committee welcomes the lapse, in 1995, of the Terrorist and Disruptive Activities Act (TADA), under which members of the security and armed forces enjoyed special powers in the use of force, arrest and detention. It also welcomes the related review of cases under this Act, following which a number of cases were dropped, and the directives given by the Supreme Court to deal with questions of bail under the TADA, though a number of cases still require to be dealt with.

10. The Committee has noted that positions in elected bodies are reserved for members of scheduled castes and tribes and that a constitutional amendment has reserved one third of the seats in elected local bodies (Panchayati Raj)

for women. The Committee also notes the introduction of a bill to reserve one third of the seats for women in the Federal Parliament and in state legislatures.

11. The Committee welcomes the restoration of elected legislatures and governments in all states within the Union, including Punjab and Jammu and Kashmir, as well as the holding of federal parliamentary elections in April-May 1996. In addition, the Committee welcomes the constitutional amendment giving a statutory basis to Panchayati Raj - village self-rule institutions - and the enactment of the Panchayati Raj (Extension to Scheduled Areas) Act of 24 December 1996, which are designed to increase participation in the conduct of public affairs at the community level.

12. The Committee further welcomes the declared intention of the Government to introduce legislative measures to further freedom of information.

D. Subjects of concern and the Committee's recommendations

13. The Committee, noting that international treaties are not self-executing in India:

> recommends that steps be taken to incorporate fully the provisions of the Covenant in domestic law, so that individuals may invoke them directly before the courts. The Committee also recommends that consideration be given by the authorities to ratifying the Optional Protocol to the Covenant, enabling the Committee to receive individual communications relating to India.

14. The Committee, noting the reservations and declarations made by the Government of India to articles 1, 9, 13, 12, 19, paragraph 3, 21 and 22 of the Covenant:

> invites the State party to review these reservations and declarations with a view to withdrawing them, so as to ensure progress in the implementation of the rights contained in those articles, within the context of article 40 of the Covenant.

15. The Committee notes with concern that, despite measures taken by the Government, members of scheduled castes and scheduled tribes, as well as the so-called backward classes and ethnic and national minorities continue to endure severe social discrimination and to suffer disproportionately from many violations of their rights under the Covenant, inter alia inter-caste violence, bonded labour and discrimination of all kinds. It regrets that the de facto perpetuation of the caste system entrenches social differences and contributes to these violations. While the Committee notes the efforts made by the State party to eradicate discrimination:

> it recommends that further measures be adopted, including education programmes at national and state levels, to combat all forms of discrimination against these vulnerable groups, in accordance with articles 2, paragraph 1, and 26 of the Covenant.

16. While acknowledging measures taken to outlaw child marriages (Child Marriages Restraint Act), the practice of dowry and dowry related violence (Dowry Prohibition Act and the Penal Code) and sati - self-immolation of widows - (Commission of Sati (Prevention) Act), the Committee remains gravely concerned that legislative measures are not sufficient and that measures designed to change the attitudes which allow such practices should be taken. The Committee is also concerned that giving male children preferred treatment persists, and deplores that practices such as foeticide and infanticide of females continue. The Committee further notes that rape in marriage is not an offence and that rape committed by a husband separated from his wife incurs a lesser penalty than for other rapists. The Committee therefore recommends:

> that the Government take further measures to overcome these problems and to protect women from all discriminatory practices, including violence. Additional information should be provided in the State party's next periodic report on the functions, powers and activities of the National Commission for Women.

17. The Committee is concerned that women in India have not been accorded equality in the enjoyment of their rights and freedoms in accordance with articles 2, paragraph 1, 3 and 26 of the Covenant. Nor have they been freed from discrimination. Women remain underrepresented in public life and at the higher levels of the public service, and are subjected to personal laws which are based on religious norms and which do not accord equality in respect of marriage, divorce and inheritance rights. The Committee points out that the enforcement of personal laws based on religion violates the right of women to equality before the law and non-discrimination. Therefore:

> it recommends that efforts be strengthened towards the enjoyment of their rights by women without discrimination and that personal laws be enacted which are fully compatible with the Covenant.

18. The Committee remains concerned at the continuing reliance on special powers under legislation such as the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act in areas declared to be disturbed and at serious human rights violations, in particular with respect to articles 6, 7, 9 and 14 of the Covenant, committed by security and armed forces acting under these laws as well as by paramilitary and insurgent groups. The Committee, noting that the examination of the constitutionality of the Armed Forces (Special Powers) Act, long pending before the Supreme Court is due to be heard in August 1997, hopes that its provisions will also be examined for their compatibility with the Covenant. In this respect, bearing in mind the provisions of articles 1, 19 and 25 of the Covenant:

> the Committee endorses the views of the National Human Rights Commission that the problems in areas affected by terrorism and armed insurgency are essentially political in character and that the approach to resolving such problems must also, essentially, be political, and emphasizes that terrorism should be fought with means that are compatible with the Covenant.

19. The Committee regrets that some parts of India have remained subject to declaration as disturbed areas over many years - for example the Armed Forces

(Special Powers) Act has been applied throughout Manipur since 1980 and in some areas of that state for much longer - and that, in these areas, the State party is in effect using emergency powers without resorting to article 4, paragraph 3, of the Covenant. Therefore:

the Committee recommends that the application of these emergency powers be closely monitored so as to ensure its strict compliance with the provisions of the Covenant.

20. The Committee expresses concern at the lack of compliance of the Penal Code with article 6, paragraphs 2 and 5, of the Covenant. Therefore:

the Committee recommends that the State party abolish by law the imposition of the death penalty on minors and limit the number of offences carrying the death penalty to the most serious crimes, with a view to its ultimate abolition.

21. The Committee notes with concern that criminal prosecutions or civil proceedings against members of the security and armed forces, acting under special powers, may not be commenced without the sanction of the central Government. This contributes to a climate of impunity and deprives people of remedies to which they may be entitled in accordance with article 2, paragraph 3, of the Covenant. Therefore:

the Committee recommends that the requirement of governmental sanction for civil proceedings be abolished and that it be left to the courts to decide whether proceedings are vexatious or abusive. It urges that judicial inquiries be mandatory in all cases of death at the hands of the security and armed forces and that the judges in such inquiries, including those under the Commission of Enquiry Act of 1952, be empowered to direct the prosecution of security and armed forces personnel.

22. The Committee regrets that the National Human Rights Commission is prevented by clause 19 of the Protection of Human Rights Act from investigating directly complaints of human rights violations against the armed forces, but must request a report from the central Government. The Committee further regrets that complaints to the Commission are subject to a one-year time limit, thus preventing the investigation of many alleged past human rights violations. Therefore:

the Committee recommends that these restrictions be removed and that the National Human Rights Commission be authorized to investigate all allegations of violations by agents of the State. It further recommends that all states within the Union be encouraged to establish human rights commissions.

23. The Committee expresses concern at allegations that police and other security forces do not always respect the rule of law and that, in particular, court orders for habeas corpus are not always complied with, particularly in disturbed areas. It also expresses concern about the incidence of custodial deaths, rape and torture, and at the failure of the Government of India to

receive the United Nations Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment. Therefore:

while the Committee welcomes the requirement by the National Human Rights Commission that all such alleged incidents be reported and investigated, and that all post-mortem examinations be taped, it recommends:

(a) The early enactment of legislation for mandatory judicial inquiry into cases of disappearance and death, ill-treatment or rape in police custody;

(b) The adoption of special measures to prevent the occurrence of rape of women in custody;

(c) The mandatory notification of relatives of detainees without delay;

(d) That the right of detainees to legal advice and assistance and to have a medical examination be guaranteed;

(e) That priority be given to providing training and education in the field of human rights to law enforcement officers, custodial officers, members of the security and armed forces, and judges and lawyers, and that the United Nations Code of Conduct for Law Enforcement Officials be taken into account in this regard.

24. The Committee regrets that the use of special powers of detention remains widespread. While noting the State party's reservation to article 9 of the Covenant, the Committee considers that this reservation does not exclude, inter alia, the obligation to comply with the requirement to inform promptly the person concerned of the reasons for his or her arrest. The Committee is also of the view that preventive detention is a restriction of liberty imposed as a response to the conduct of the individual concerned, that the decision as to continued detention must be considered as a determination falling within the meaning of article 14, paragraph 1, of the Covenant, and that proceedings to decide the continuation of detention must, therefore, comply with that provision. Therefore:

the Committee recommends that the requirements of article 9, paragraph 2, of the Covenant be complied with in respect of all detainees. The question of continued detention should be determined by an independent and impartial tribunal constituted and operating in accordance with article 14, paragraph 1, of the Covenant. It further recommends, at the very least, that a central register of detainees under preventive detention laws be maintained and that the State party accept the admission of the International Committee of the Red Cross to all types of detention facilities, particularly in areas of conflict.

25. The Committee notes with concern that, although the Terrorist and Disruptive Activities (Prevention) Act has lapsed, 1,600 people remain in detention under its provisions. Therefore:

the Committee recommends that measures be taken to ensure either the early trial of these people or their release. It is also concerned that there are legislative proposals to reintroduce parts of the Act and that this could lead to further violations of the Covenant.

26. The Committee expresses concern at the overcrowding and poor health conditions and sanitation in many prisons, the inequality of treatment of prisoners and the lengthy periods of pre-trial detention, all of which are incompatible with articles 9 and 10, paragraph 1, of the Covenant. Therefore:

the Committee, while welcoming the initiative to give the central Government a greater role in the administration and management of prisons, recommends that measures be taken to reduce overcrowding, to release those who cannot be given a speedy trial and to upgrade prison facilities as quickly as possible. In this respect, the Committee recommends that attention be given to the United Nations Standard Minimum Rules for the Treatment of Prisoners.

27. Concerning court procedure:

the Committee urges the institution of reforms to the procedure of the courts to ensure a speedy trial of those charged with offences, prompt hearing in civil cases and similar urgency in hearing appeals.

28. The Committee expresses its concern at reports that fines have been imposed, without a hearing, on communities in areas declared disturbed. Therefore:

the Committee recommends that the imposition of such fines be prohibited.

29. The Committee expresses concern at the extent of bonded labour, as well as the fact that the incidence of this practice reported to the Supreme Court is far higher than is mentioned in the report. The Committee also notes with concern that eradication measures which have been taken do not appear to be effective in achieving real progress in the release and rehabilitation of bonded labourers. Therefore:

the Committee recommends that a thorough study be urgently undertaken to identify the extent of bonded labour and that more effective measures be taken to eradicate this practice, in accordance with the Bonded Labour System (Abolition) Act of 1976 and article 8 of the Covenant.

30. The Committee expresses concern at reports of forcible repatriation of asylum seekers, including those from Myanmar (Chins), the Chittagong Hills and the Chachmas. Therefore:

the Committee recommends that, in the process of repatriation of asylum seekers or refugees, due attention be paid to the provisions of the Covenant and other applicable international norms.

31. The Committee deplores the high incidence of child prostitution and trafficking of women and girls into forced prostitution, and it regrets the lack of effective measures to prevent such practices and to protect and rehabilitate the victims. The Committee also regrets that women who have been

forced into prostitution are criminalized by the Immoral Trafficking Prevention Act and, further, that article 20 of the Act puts the burden of proof on a woman to prove that she is not a prostitute, which is incompatible with the presumption of innocence. Therefore:

the Committee recommends that the application of this law to women in the situation described be repealed and that measures be taken to protect and rehabilitate women and children whose rights have been violated in this way.

32. The Committee further regrets the lack of national legislation to outlaw the practice of Devadasi, the regulation of which is left to the states. However, it appears that the practice continues and that not all states have effective legislation against it. The Committee emphasizes that this practice is incompatible with the Covenant. Therefore:

the Committee recommends that all necessary measures be taken urgently to eradicate the practice of Devadasi.

33. The Committee expresses its concern at the plight of street children and at the reported high level of violence against children within society. It is particularly concerned at reports of child mutilation. Therefore:

the Committee recommends that urgent measures be taken to address the problem of violence against children and that specific mechanisms be set up for the protection of children.

34. The Committee expresses concern that, despite actions taken by the State party, there has been little progress in implementing the Child Labour (Prohibition and Regulation) Act of 1986. In this respect:

the Committee recommends that urgent steps be taken to remove all children from hazardous occupations, that immediate steps be taken to implement the recommendation of the National Human Rights Commission that the constitutional requirement that it should be a fundamental right for all children under 14 to have free and compulsory education be respected, and that efforts be strengthened to eliminate child labour in both the industrial and rural sectors. The Committee also recommends that consideration be given to establishing an independent mechanism with effective national powers to monitor and enforce the implementation of laws for the eradication of child labour and bonded labour.

35. Concerning the periodic report:

the Committee draws to the attention of the Government of India the provisions of paragraph 6 (a) of the guidelines regarding the form and content of periodic reports from States parties, and requests that, accordingly, its next period report, due on 31 December 2001, should contain material which responds to all these concluding observations. The Committee further requests that these concluding observations be widely disseminated among the public at large in all parts of India.